

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0417
Sales and Use Tax
For The Tax Period 2003-2004

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ISSUES

I. Sales and Use Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-2-2(a); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a).

The Taxpayer protests the imposition of sales tax.

II. Tax Administration - Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b)(c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation selling guns and related sporting equipment. The Indiana Department of Revenue (Department) audited the Taxpayer for the tax years 2003-2004. Pursuant to the audit, the Department assessed additional sales tax, use tax, penalty, and interest for the tax years 2003-2004. The Taxpayer protested the assessments of sales tax and penalty. A hearing was held. This Letter of Findings results.

I. Sales and Use Tax – Imposition.

DISCUSSION

At the time of the audit, the Taxpayer's records necessary for determining the gross sales subject to the imposition of sales tax were unavailable or what was available was inadequate. Therefore, the Department determined the sales tax liability by extrapolating gross sales from the costs of goods sold. The Department assessed sales tax on the Department's estimate of the gross sales of the Taxpayer. The Taxpayer protested this assessment arguing that the assessment was inaccurate. The Taxpayer argued that the Department's estimate produced gross sales significantly higher than the Taxpayer's actual gross sales because it was unable to mark up prices by the percentages the Department used and still compete in its market. Also the Taxpayer argued that many of its sales qualified for exemptions from the sales tax.

At the hearing, the Taxpayer offered to submit original invoices and documents to determine its actual gross sales and resulting sales tax liability. The Department agreed to review a sample of all invoices from the months of June and December of the tax years for accuracy and relevance and weigh them accordingly in determining the Taxpayer's sales tax liability.

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Taxpayers are required to keep the books, source documents, and records necessary for the Department to determine the correct amount of tax due and produce those at the request of the Department. IC § 6-8.1-5-4(a).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction in the seller's regular course of business. IC § 6-2.5-2-1(a). The amount of sales tax is measured by the gross retail sales of the seller. IC § 6-2.5-2-2(a). The purchaser of the property is liable for the sales tax. As the agent of the state, the seller has the duty to collect the sales tax and remit it to the Department. IC § 6-2.5-2-1(b).

After the hearing, the Taxpayer produced documents intended to substantiate its claims that the estimate of gross sales was inflated and that many sales qualified for exemption from the sales tax. Upon careful review, the Department determined that the submitted documents were inadequate for these purposes. While the Department understands the Taxpayer's argument, the documents are insufficiently detailed to support the Taxpayer's position. The Taxpayer failed to sustain its burden of proving that the Department's assessment of sales tax was incorrect. The Department properly assessed sales tax pursuant to IC § 6-2.5-2-1(a).

FINDING

The Taxpayer's protest is respectfully denied.

II. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers have a duty to maintain good records to substantiate their sales and use tax liabilities. The Taxpayer breached this duty. This breach of the Taxpayer's duty constituted negligence. The facts and circumstances of this case do not allow for a waiver of the negligence penalty.

FINDING

The Taxpayer's protest to the imposition of the penalty is respectfully denied.

KMA/LS/DK-November 27, 2007